

**ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
SEPTEMBER 13, 2012**

Town of Bedford  
Bedford Town Hall  
Lower Level Conference Room

**PRESENT:** Angelo Colasante, Chair; Jeffrey Cohen, Acting Clerk; Jeffrey Dearing; Carol Amick; Todd Crowley

**ABSENT:** Kenneth Gordon, Vice Chair; Brian Gildea, Clerk; Steven Henning

Mr. Colasante introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and ZBA assistant introduced themselves.

**PRESENTATION:** Mr. Cohen, Acting Clerk, read the notice of the hearing.

**PETITION #008-13** – Eugene Clerkin, 46 Elm Street, seeks a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct deck within front yard setback.

Mr. Clerkin greeted the Board and explained that the property in question was technically 46-48 Elm Street, a parcel on which sits two separate structures. He said he was proposing a 12' x 22' deck to be added to the barn structure at 46 Elm Street; this deck would be set back 25.3 feet from the front property line, for which the allowable setback is 35 feet. He noted that the barn itself extends to 7.8 feet from the front property line at its closest point, so this deck will be well under the existing non-conformity.

Mr. Colasante asked whether the applicant planned to have a roof over the deck. Mr. Clerkin replied that he did not. Mr. Colasante asked whether the applicant had a problem with a Condition that would prohibit a roof from being constructed or the deck being enclosed. Mr. Clerkin said that was fine with him, as he had no intentions of ever enclosing or covering the deck, especially since the reason behind wanting a deck was to have outdoor space.

The Board talked about the location of the deck on the property.

Ms. Amick asked the applicant to recount some of the history of the house. Mr. Clerkin explained that the house was built by the Bacon family in the early 1800s, and several renovations and a barn were built in the 1850s. He said that he bought the property in 2009 and performed an extensive renovation on it, at which time the house and the barn were both lifted to pour new foundations and preserve the original structures.

Mr. Colasante opened the hearing to the public. With no comments or questions from those in attendance, Mr. Colasante closed the public hearing.

**DELIBERATIONS:**

Mr. Colasante reminded the Board that the two conditions of a Special Permit are that the project was in keeping with the intent and purpose of the By-Law and was not injurious or detrimental to the neighborhood. He stated that, in his opinion, this project would not intensify the existing non-conformity, as it didn't encroach any farther into the setback, and he saw no problems with the request. Mr. Dearing agreed, adding that the applicant has been very judicious in regards to the setbacks. The other Board members agreed as well.

**MOTION:**

Mr. Cohen moved to grant Eugene Clerkin, 46 Elm Street, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct deck within front yard setback, substantially as shown on Exhibit A, plot plan, and Exhibit B, framing details, subject to the condition that the deck never be enclosed.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Amick, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0

Mr. Colasante explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

**PRESENTATION:** Mr. Cohen read the notice of the hearing.

**PETITION #011-13** – Mark and Annemarie Silver, 21 Railroad Avenue, seek a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct addition within side yard setback.

Dan Qualie, the architect for the applicants, introduced himself and explained that he would be representing the Silvers for this hearing. He added that the Silvers had written a letter to the Board, included in the application packet, granting him permission to represent them.

Mr. Qualie explained that the homeowners would like to add a two-bay garage with a master bedroom above, and a small mudroom linking the garage to the existing structure. He said that the original application packet showed that the proposed structure would encroach four feet into the side yard setback, but upon further review of the plans, the

applicants had decided that an extra foot was necessary, so the new proposal was for the structure to extend five feet into the side yard setback, with ten feet remaining to the property line. He noted that he had a new plot plan reflecting this change.

Mr. Cohen said that there have been occasions in the past when the plot plan was not quite accurate and additions have ended up closer to the property line than the Board had intended; he said that his suggestion to avoid this problem was to set a condition on the Special Permit stating that the addition will be no closer than 10 feet to the property line. Mr. Qualie said he would be comfortable with such a condition.

Mr. Colasante said he wished he knew what the rest of the neighborhood looked like, as he worried that this addition would be out of place in the area. Mr. Cohen stated that he had printed out an overhead photograph of the house and surrounding structures, from the Bedford GIS database. He noted that the house next door had been expanded, and it appeared that others in the neighborhood had as well, so he believed that this type of addition would not be uncommon or out of place.

Mr. Colasante opened the hearing to the public. He read letters of support for the project from Ed and Michele Gagnon, of 19 Railroad Avenue, and Gail Green, of 23 Railroad Avenue – the abutters on either side of the applicants' property.

With no comments or questions from those in attendance, Mr. Colasante closed the public hearing.

#### **DELIBERATIONS:**

Mr. Colasante said that this addition will introduce a new non-conformity to the property but he could support this request based on the aerial photograph and other apparent non-conforming characteristics of the neighborhood; he wouldn't want to introduce a new non-conformity in a fully conforming neighborhood.

Mr. Cohen said it looked to be a very handsome addition, and he reiterated that it was in keeping with the neighborhood around it. He believed it met the two criteria for granting a Special Permit, that the proposed project was not substantially more detrimental or injurious to the neighborhood and that the project was in keeping with the intent and purpose of the By-Law.

Ms. Amick agreed, noting that she was very familiar with the neighborhood and she felt that the addition was in keeping with it, as well as being architecturally attractive.

Mr. Dearing said that a standard one-bay garage width was 12 feet, so the applicants had already made concessions in regards to the setbacks by proposing a 22 foot width for a two-bay garage.

#### **MOTION:**

Mr. Cohen moved to approve Mark and Annemarie Silver, 21 Railroad Avenue, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct addition within side yard setback, substantially as shown on Exhibit A, set of drawings dated 9/13/12, including site plan and architectural drawing dated 8/23/12, subject to the condition that the new addition will encroach no closer than 10 feet to the side lot line.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Amick, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0

Mr. Colasante explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

**PRESENTATION:** Mr. Cohen read the notice of the hearing.

**PETITION #009-13** – Michael Barbehenn, 62 Fletcher Road, seeks a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to replace existing garage within side yard setback.

Jacinda Barbehenn, one of the applicants for 62 Fletcher Road, introduced herself and stated that she and her husband had an existing single car garage that was extremely old, and they would like to replace that garage and extend it out to make it 24 feet deep instead of the current depth of 20 feet. She explained that the structure currently stood 1.69 feet away from the property line at its closest point, and it is because of this non-conformity that they needed a Special Permit to expand it along the property line. She added that the garage would not have any plumbing or living space, and would strictly be used for cars and additional storage area.

Mr. Cohen asked whether the new garage would have gutters. Ms. Barbehenn said she wasn't entirely sure but she thought it would. Mr. Cohen said he worried about the roof runoff draining into the neighbor's yard, since the garage was so close to the lot line; he asked whether a condition of the Special Permit, if it were granted, that required gutters would be amenable. Ms. Barbehenn said she would have no problem with that condition.

Mr. Colasante said this application was a bit of a double-edged sword: the garage was already there, so no new non-conformity would be introduced, but the Board also had an opportunity to correct this problem now. He said he was concerned that the new foundation excavation could undermine the neighbor's yard and that such damage could cause problems between the neighbors; if the garage could be located farther from the line, such potential problems might be avoided.

Ms. Amick said that 1.69 feet was extremely close to the property line, and she said she would have a difficult time voting in favor of such a setback. She noted that if the neighbor were ever to put up a fence, it would be extremely difficult for anyone to even walk between the fence and the garage.

Mr. Cohen asked the applicant to describe the back yard. Ms. Barbehenn stated that the back yard was filled with perennial flower gardens, vegetable patches, blackberry bushes, and a fish pond. She added that the extensive landscaping was one of the reasons that they couldn't push the garage in any farther away from the lot line, because it would infringe on the garden.

There was conversation about the topography of the lot and the placement of the driveway. Ms. Barbehenn said that the other primary reason for wanting the garage to remain in its existing location is because it would make the turning radius very difficult if the garage were pushed farther in.

Mr. Colasante opened the hearing to the public.

Tim Gray, of 57 Fletcher Road, said that the Barbehenns lived across the street from him and had always been good neighbors, and he supported their application.

There was discussion about whether the applicant could rebuild the existing garage as of right, if she were denied this Special Permit. The Board members stated she would have to speak with someone in Code Enforcement but they believed that the applicants could rebuild the garage by right as long as there was no more encroachment along the side yard lot line. The members believed the applicants could extend the garage into the yard by right.

With no further comments or questions from those in attendance, Mr. Colasante closed the public hearing.

#### **DELIBERATIONS:**

Mr. Cohen stated that the garage has been there for many years, and he understood the issue regarding the vehicle turnaround and believed that if the garage moved, it would compromise the ability for turning vehicles around. He said that, because the garage already existed, he could support this application; he added that any concerns regarding excavation and runoff were the responsibility of the contractor. Mr. Colasante agreed.

Mr. Dearing said that he couldn't see this as being injurious, because the garage had already been there for so long; he added that the garage has been there so long that it has actually become part of the fabric of the neighborhood.

Ms. Amick said that, after listening to the other Board members discuss the project, especially the driveway turnaround problems, she could support this application, but she

wished the applicants had put a little more thought into ways that the garage could have been pushed back and not remain so close to the property line.

For clarification purposes, Mr. Cohen reiterated to the applicant that there would be a condition of the Special Permit requiring gutters on the garage. Ms. Barbehenn she understood and had no problem with it.

**MOTION:**

Mr. Cohen moved to grant to Michael Barbehenn, 62 Fletcher Road, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to replace existing garage within side yard setback, substantially as shown on Exhibit A, drawings 1-3 inclusive, and Exhibit B, plot plan dated 9/5/2012, subject to the condition that garage have gutters and downspouts to direct roof runoff onto 62 Fletcher Road property and not into neighbors' yards.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Amick, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0

Mr. Colasante explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

**PRESENTATION:** Mr. Cohen read the notice of the hearing.

**PETITION #010-13** – Pamela Brown, Esq., for Chipotle Mexican Grill, 301 Great Road, seeks a Special Use Permit per Section 4.5.7 and per Table I: Use Regulations to allow new restaurant to occupy building; and seeks a Special Sign Permit per Article 40.5 Section 2 of the Sign By-Law to illuminate wall sign.

Ms. Brown greeted the Board and introduced Sara Connolly, of BKA Architects, the firm representing Chipotle Mexican Grill. Ms. Brown explained that tonight's proposal was a Special Use Permit for restaurant use, to have Chipotle take over the building where Friendly's was until a few months ago. She noted that Chipotle will own the entire building but will only use two-thirds of it for its space; the other third will be leased out to another tenant, most likely for retail. She stated that Special Permits run with the land, and Friendly's did originally have such a permit from the ZBA; however, because Chipotle was requesting outdoor seating, Christopher Laskey, the Code Enforcement Director, decided that it was enough of a change to require a new Special Permit.

There was discussion about the number of seats. Ms. Brown stated that there would be 50 seats inside the restaurant and 12 “seasonal” seats outside. She said that Friendly’s had 112 seats, so this will be far under that seating count and the parking will therefore not pose any problems.

Mr. Colasante talked with the applicants about the meaning of “seasonal seating” and whether it meant that the seats would only be there during certain times of the year; he asked the Board members whether they wanted to permit those seats for specific months. Ms. Brown said that Boardroom Bistro already has outdoor seating, and Ginger’s Japanese Cuisine at the new Blake Block building will have outdoor seating as well, and those seats are simply included in the total seat count and not considered separate. Mr. Cohen said he didn’t feel it mattered what times of the year the seats were outside because, as Ms. Brown pointed out, they would ultimately be added to the entire seating count. Ms. Brown said those seats could just be referred to as “patio seating” as opposed to seasonal.

Mr. Cohen asked whether there would be a wait staff. Ms. Connolly said there would not. She said Chipotle classified itself as “fast casual” dining, and although people order food at the counter and take it with them as they would do at a fast-food restaurant, Chipotle prided itself on the quality of the food, which is all organic and locally grown wherever possible.

The Board discussed the building’s plumbing fixture capacity and egress capacity as related to the seasonal seating and found that they were adequate to serve the proposed plan.

There was further conversation about parking and the traffic flow of the property.

The Board talked with the applicant about delivery hours and hours of operation. Ms. Connolly noted that the operating hours would be 11:00 AM to 10:00 PM, seven days a week.

The Board talked about the sign, and it was decided that the proposed wall sign was well under the dimensions allowed by the Sign By-Law.

Mr. Colasante asked whether a new Special Permit would need to be granted for the other third of the building, if a retail tenant were to go in. Ms. Brown said that retail was allowed in this zone by right, so no additional permitting would be necessary, unless they were to obtain a Special Permit for sign illumination.

Mr. Cohen asked whether a certain percentage of the outside seating would be reserved for wheelchair accessibility. Ms. Connolly said that they would, and that both indoor and outdoor seating would follow all ADA guidelines.

Ms. Amick said that the Board will soon be receiving a letter from the Selectmen regarding this area, as it has been identified as the most polluted section of the

Shawsheen River.

Mr. Cohen asked whether the sign illumination would be on a timer. Ms. Connolly replied that it would, along with the exterior building lights and patio lighting.

Mr. Colasante opened the hearing to the public. With no comments or questions from those in attendance, Mr. Colasante closed the public hearing.

**DELIBERATIONS:**

Mr. Cohen suggested that the Board make two votes for the two separate issues of restaurant use and signage. He supported the outdoor seating. He said that the use itself was in still keeping with the intent and purpose of the By-Law and was not injurious or detrimental to the neighborhood. He said that the parking and traffic patterns were not an issue, since Friendly's had much more seating. He noted that the outdoor seating was in line with Bedford's Comprehensive Plan to have more outside uses and make the streetscape more intimate and inviting.

Mr. Colasante said he felt this would be an improvement over what was there before. The other Board members agreed.

**MOTION (Use):**

Mr. Cohen moved to grant to Pamela Brown, Esq., for Chipotle Mexican Grill, 301 Great Road, a Special Use Permit per Section 4.5.7 and per Table I: Use Regulations to allow new restaurant to occupy building, substantially as shown on Exhibit A, Fixture Furniture and Equipment Plan dated 8/17/2012, and Exhibit B, Chipotle Mexican Grill exterior renderings plan dated 8/21/12, subject to the condition that the outdoor seating count shall be included in restaurant's total seating count; that the total seating count be 62 seats; and that hours of operation shall be 11 AM to 10 PM, Sunday through Saturday.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Amick, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0

Mr. Colasante explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

Mr. Colasante said that he thought the proposed sign and its illumination was tasteful and attractive. The other members agreed.



**MOTION (Sign):**

Mr. Cohen moved to grant to Pamela Brown, Esq., for Chipotle Mexican Grill, 301 Great Road, seeks a Special Sign Permit per Article 40.5 Section 2 of the Sign By-Law to illuminate wall sign, substantially as shown on Exhibit C, building elevation dated 8/17/12, and Exhibit D, sign elevation dated 8/17/12, subject to the condition that sign illumination be turned off between the hours of 11 PM and 6 AM and that sign illumination be on a timer.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Amick, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0

Mr. Colasante reiterated that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

**BUSINESS MEETING:**

Mr. Cohen talked with the Board members about upcoming courses offered by the Citizen Planner Training Collaborative, designed to assist Zoning and Planning Board members in their understanding of Massachusetts by-laws.

**MOTION:**

Mr. Cohen moved to adjourn the meeting.

Ms. Amick seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Amick, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0

The meeting adjourned at 9:40 PM.

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Angelo Colasante, Chair

Date

Respectfully Submitted,

Zoning Board of Appeals  
Minutes of Meeting 9-13-12

Scott Gould  
ZBA Assistant